

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 33

REICHHOLD, INC.

Employer

and

Case 33-RC-4878

INTERNATIONAL CHEMICAL WORKERS UNION  
COUNCIL OF THE UNITED FOOD AND COMMERCIAL  
WORKERS UNION

Petitioner

REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION

The Employer, Reichhold, Inc., has a facility in Morris, Illinois where it is engaged in the manufacture of chemicals. The Petitioner, International Chemical Workers Union Council of the United Food and Commercial Workers Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent the Employer's full-time and regular part-time production, maintenance, warehouse, spotter, boiler house, laboratory, and waste water treatment employees. A hearing officer of the Board held a hearing and the parties filed briefs.

As evidenced at the hearing and in the briefs, the parties disagree on five issues: (1) whether the lead operators are statutory supervisors; (2) whether the interim production manager/scheduler is a statutory supervisor and/or substitutes for a statutory supervisor on a regular and substantial basis; (3) whether the chemist in the Polyester department is a professional employee; (4) whether the environmental engineer is a professional employee and/or a statutory supervisor; and (5) whether the contract

coordinator shares a sufficient community of interest with the petitioned-for unit. The Petitioner contends the lead operators are not supervisors and should be included in the unit, while the chemist and environmental engineer are professional employees and should be excluded from the unit, though the Petitioner did not address the professional status of the environmental engineer in its brief. The Petitioner also contends the environmental engineer is a statutory supervisor. The Petitioner seeks to exclude the interim production manager/scheduler as a statutory supervisor and to include the contract coordinator as he shares a community of interest with the petitioned-for unit. The Employer urges the opposite resolution of the issues.

I have considered the evidence and the arguments presented on these five issues. As discussed below, I have concluded the lead operators are not supervisors. I have also concluded that the interim production manager/scheduler does not possess supervisory authority and does not substitute for a supervisor on a “regular and substantial” basis so as to warrant his exclusion. I have concluded the environmental engineer is not a supervisor, but I have further concluded the record evidence is insufficient to establish whether the environmental engineer is a professional employee. The record is also insufficient to determine the Polyester chemist's status as a professional employee. Finally, I have concluded the record evidence is insufficient to determine the unit placement of the contract coordinator. Accordingly, I have directed an election in the petitioned-for unit which includes lead operators and the interim production manager/scheduler in Polyester, and I will permit the environmental engineer, the chemist in the Polyester department, and the contract coordinator to vote subject to the Board's challenged ballot procedure. There are approximately 87 employees in the unit found appropriate here.

## **I. OVERVIEW OF OPERATIONS**

The Employer's Morris, Illinois facility produces polyester resin and other chemicals used in various industries to make such products as latex paint, automotive parts, and boats. The polyester resin and other chemicals are produced in reactors, vessels with specific parameters controlling the internal environment, including temperature and pressure. Raw materials are blended together and placed into the reactors to create the desired chemical product. These chemicals are blended by the operator either physically by hand or through computers located in the control room. The chemicals are then either placed into storage tanks or placed into drums and loaded onto trucks to be delivered to the customers.

The Employer's operations are divided into seven departments: Polyester, Emulsion, Urotuf, Maintenance, Utilities, Waste Water Treatment, and Shipping and Receiving. Plant Manager Jim Venable has the overall responsibility for all these departments. The chemicals are produced in the Polyester, Emulsion, and Urotuf departments. The lead operators in dispute work in these three production departments, with four in Polyester, four in Emulsion, and one in Urotuf who also functions as a scheduler. In addition to the disputed lead operators, there are 12 operators in Polyester, 12 operators in Emulsion, and 4 operators in Urotuf. The Polyester, Emulsion, and Urotuf production departments operate continuously 24 hours a day, 7 days a week. Both lead operators and non-lead operators in these departments work 12-hour shifts.

In addition to the operators, the Polyester department also includes eight quality control laboratory technicians, one chemist whose status is in dispute, and a scheduler who also functions as the interim production manager and whose status is also in dispute. The Polyester lead and non-lead operators currently report to the interim production manager while the quality control technicians and the chemist report to the

Polyester technical or quality manager. The interim production manager and the technical/quality manager both report to Plant Manager Venable.

In the Emulsion department, in addition to the lead and non-lead operators, the Employer also employs one chemist, whom the parties have stipulated should be included in the unit, one lead technician, and one scheduler whom the parties have also stipulated should be included in the unit. The employees in the Emulsion department report to Production Manager Ron Ziegler, who in turn reports to the plant manager. The Urotuf department has only five operators, one of whom functions as both a lead operator and a scheduler and whose status is in dispute. The Urotuf employees also report to Production Manager Ziegler.

The Maintenance and Utilities department employees report to Tony Marsiglio, the maintenance, utilities, and engineering manager. The Maintenance department consists of four electrical and instrumentation technicians, and seven maintenance mechanics. The Utilities department consists of four utility operators who work in the boiler room. In the Waste Water Treatment department, the Employer employs one operator, four spotter/operators, the environmental engineer whose status is in dispute, and the environmental health and safety specialist (EHS) whom the parties stipulated is included in the unit. These individuals report to the Environmental Health and Safety Manager, Mickey Hannum. The Shipping and Receiving department consists of three material handlers, one shipping clerk or coordinator, and eight spotters. These individuals work in the warehouse and also in the Employer's bulk storage area. These individuals report to Ken Ball, the materials manager.

All of the employees, including lead operators and non-lead operators, receive the same benefits as the stipulated supervisors, including vacations, holidays, break periods, and parking lot privileges. The lead operators and the non-lead operators are all hourly employees and all work 12-hour shifts. The lead operators also perform the

same job duties as the non-lead operators in their respective departments, including operating the blender and the reactor, and loading trucks. The record does not reflect the specific wage rates received by the lead operators, the non-lead operators, or the stipulated supervisors. The record does reflect that lead operators make slightly higher wages than the non-lead operators. One lead operator testified he received an additional \$1.00 more per hour when he became the lead operator. The lead operators and the non-lead operators wear the same uniforms as do most of the other employees in the petitioned-for unit.

## **II. DUTIES OF LEAD OPERATORS**

The record reflects the lead operators do not possess the authority to hire, fire, reward, promote, suspend, layoff, or recall employees, or to effectively recommend such actions. Thus, the supervisory criteria at issue are whether the lead operators can assign work, responsibly direct, transfer, or discipline employees, or to effectively recommend such actions, or to adjust grievances.

### **A. Assignment of Work/Scheduling/Transfer**

Lead operators do not schedule non-lead operators for particular shifts or departments. Lead operators and non-lead operators determine what their daily tasks will be by reading schedules prepared by the department scheduler, a unit employee. The schedulers in each department obtain information from the plant manager, the production manager, customer orders, delivery due lists, and inventory levels to determine what the daily production schedule should be. In the Polyester department, the scheduler produces an instruction log, a reactor schedule, and a shipping/production schedule. The instruction log contains special instructions concerning shipping, loading, or production requested by the customer. The reactor schedule indicates the times the various reactors are available throughout the day for production. The shipping/production schedule indicates when orders need to be shipped to meet the

customers' demands. The schedulers in the Emulsion and Urotuf departments create similar production schedules. Based on these schedules, the lead and non-lead operators determine which reactors to start at which times to meet the production demand, and which trucks to load first to meet the shipping schedule.

Both the environmental health and safety manager and the Emulsion/Urotuf production manager testified that lead operators do not assign specific tasks to the non-lead operators, but rather the non-lead operators are experienced employees who know what duties they are to perform. The lead operators themselves testified that they do not assign job duties to other operators, but rather the operators are "self-directed" and do not need instructions on how and when to perform their duties. The Employer's job descriptions or Standard Operating Procedures (SOP) for the non-lead operators describe the specific duties they are to perform. There is no evidence the lead operators can assign duties to the non-lead operators that do not conform to these job descriptions or SOPs.

Lead operators and non-lead operators rotate performing the various duties of the production operators. In the Polyester department, the lead and non-lead operators rotate the duties of truck loading operator, blending operator, and reactor operator. The job description for the Emulsion operators reflects they rotate the duties of "filtration" operator and reactor operator. The operators in Urotuf rotate similar duties. The lead and non-lead operators on each shift determine as a group what their rotation schedule will be. There is no evidence the lead operators assign a rotation schedule to a particular operator. There is also no evidence that lead operators schedule lunch or break periods.

The job description for the lead operators states the lead operator is to ensure all tasks assigned to shift personnel are completed. The record, however, fails to reflect specific examples of lead operators ensuring such tasks are completed. There is no

record evidence the lead operators check the work of the non-lead operators to ensure the work is being completed timely, or that the work is being completed correctly. Lead operators cannot discipline employees for their performance, nor do they conduct employee performance evaluations. No lead operator has ever been disciplined for mistakes by other employees, or for other employees failing to complete their tasks. The job descriptions for the non-lead operators state that all operators are responsible as a team to ensure completion of all tasks.

Lead operators do not assign non-lead operators to a particular shift or on-call schedule, though they are responsible for ensuring the on-call or overtime list is completed. With respect to the on-call schedule, the record reflects the lead and non-lead operators sign up for days when they can be on call in case of absences. There is no evidence a lead operator can assign a non-lead operator to a particular on-call day, even if there is a slot left empty on the on-call list. No lead operator has ever been disciplined for failing to ensure the on-call list has been completed.

When an employee calls in or is absent, the lead operator, or a non-lead operator, will use the overtime/call-out list to contact a replacement. The record evidence is conflicting as to what the lead operator or non-lead operator does if the operator who is on call on a particular day is not available to come in. The environmental health and safety manager testified that if the first person listed on the on-call list was not available, the lead operator could then call any other operator without following the order of the call-out list. The environmental health and safety manager, however, did not indicate how the lead operator would determine which operator to call if the on-call operator for that day was not available. One lead operator testified he went down the on-call list and continued to call the operators on the list until someone was available. The record does not reflect any specific instances of lead operators or non-lead operators seeking replacement employees when the on-call employee was not

available. There is no evidence the lead operator can force an employee to come in and work or force an employee to work overtime to fill in for an absent employee.

Lead operators do not approve sick leave, vacations, or other time off for the operators. The record testimony on whether non-lead operators must first obtain permission from lead operators to leave work early is conflicting. The environmental health and safety manager testified that lead operators could allow an employee to leave early, though the record does not reflect under what circumstances a lead operator could do so, or how frequently a lead operator could do so. The environmental health and safety manager also testified that if a replacement could not be found for the employee who left early, the lead operator would consult with the production manager to determine whether to shut down part of the production process. Again, the record does not reflect a single instance in which a lead operator on his own authority, or even in consultation with higher management, shut production down based on the inability to replace an absent employee. Two lead operators and one non-lead operator testified that employees do not need to request permission from a lead operator before leaving early. The record reflects no examples of non-lead operators or other unit employees seeking permission or approval from the lead operator before leaving early, nor are there any instances in which a lead operator specifically approved or disapproved an employee's request to leave early.

Lead operators cannot transfer employees, either temporarily or permanently, to different departments, different shifts, or different job classifications. The environmental health and safety manager testified lead operators can "transfer" employees to different "tasks". The record reflects lead operators can request another employee perform a particular job duty to ensure a product is delivered on time, such as help load trucks if the truck loading operators are behind. There is no record evidence the lead operators can force an employee to perform a specific task.



## **B. Responsible Direction**

As noted above, the lead operators are to ensure the tasks on their shift are completed in a timely manner to meet production demands. The lead operators use the instruction logs, reactor schedules, and truck loading schedules to determine what the production demands are. The non-lead operators know what duties must be performed to meet the production demands and perform those duties without specific directions from the lead operators. The environmental health and safety manager conclusionarily testified the lead operators can “direct” the non-lead operators, but did not provide specific examples of lead operators directing the work of non-lead operators using independent judgment.

There is no evidence the lead operators directly observe other employees in the performance of their duties. There is no evidence the lead operators direct non-lead operators to redo a particular task that is not performed correctly, or to perform their tasks more quickly or in a different manner. Lead operators, as well as non-lead operators, do assist in the training of new employees, though the record does not reflect the specific types of training provided by the lead operators. The record reflects one instance in which one lead operator was asked for his opinion by the Emulsion and Urotuf production manager on whether a new employee was properly trained. The lead operator indicated the new employee needed further training and the employee’s probationary period was extended. However, the record does not reflect what weight was given to the lead operator’s opinion, whether other non-lead operators also had input into this decision, and whether the production manager conducted his own independent review of the new employee’s skills before making the determination to extend the probationary period.

Lead operators are not held responsible for mistakes made by non-lead operators in the performance of their duties, or for the failure of non-lead operators to

complete on-call lists. While the lead operators are to ensure various paperwork is completed by the non-lead operators, such as shift lists, maintenance work orders, safety and other inspection reports, and incident reports, lead operators have not been held responsible for the failure of any non-lead operator to timely or correctly complete these forms. Lead operators are also expected to ensure the work area is cleaned up and free from debris which could cause an accident. There is no evidence of a lead operator directing another employee to perform these housekeeping duties, nor has a lead operator been held responsible for the failure of a non-lead operator to perform these housekeeping tasks.

The job description for the lead operators states they are to “provide direction” in making changes to work prioritization. The record reflects the order of jobs sometimes needs to be changed to meet changes in the production schedule. The lead operators testified they may ask a non-lead operator to perform a different task, such as to stop blending one batch and start blending another, or to stop blending and start loading trucks. The record reflects the non-lead operators, however, typically know what to do to meet changes in the production schedule and they perform the necessary tasks without instructions from the lead operator. Again, there is no evidence the lead operator can force an employee to perform a specific task, nor can a lead operator discipline an employee for refusing to perform a particular task. While lead operators can report to management that a non-lead operator has refused to perform a requested task, the record reflects no specific instances of employees receiving discipline for refusing to perform tasks requested by a lead operator. The job description for the scheduler indicates that all operators, not just lead operators, have the authority to make changes in order to ensure “on time delivery of product” to the customer.

The production manager for the Emulsion and Urotuf departments testified that lead operators can shut the plant down due to a safety concern. The record does not

reflect what constitutes a safety concern, nor does the record contain a single instance of a lead operator shutting the plant down for that reason. The production manager also testified the non-lead operators have the same authority to shut the plant down due to safety reasons.

Lead operators are the highest ranking individual at the facility at nights and on weekends. There is no evidence, however, of lead operators handling emergency situations or unusual situations when acting as the highest ranking individual at the facility.

### **C. Discipline**

Lead operators do not have the authority to discipline employees. The record contains only one instance of a lead operator recommending discipline. In this one instance, which occurred last year, a lead operator recommended a non-lead operator be terminated. The record does not reflect the basis for the lead operator's recommendation. The environmental health and safety manager ultimately made the decision to terminate the employee but only after conducting his own independent investigation into the employee's work performance. There is no evidence the environmental health and safety manager based his decision to terminate the employee solely on the recommendation of the lead operator.

### **D. Adjust Grievances**

The job description for lead operators states they have the authority to resolve "minor" conflicts, including personality conflicts between operators. The record does not reflect any specific instances of a lead operator resolving a minor conflict. All unresolved conflicts must be reported to management.

## **III. ANALYSIS OF LEAD OPERATORS' SUPERVISORY STATUS**

The traditional test for determining supervisory status used for all employees is:  
(1) whether the employee has the authority to engage in any 1 of the 12 criteria listed in

Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the employee holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). The analysis must differentiate between “the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact.” *Training School at Vineland*, 332 NLRB 1412, 1416 (2000). The Board frequently warns against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

The burden of proving supervisory status lies with the party asserting that such status exists. *Kentucky River Community Care, Inc.*, 121 S. Ct. 1861, 1866 (2001). Lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB 1409 (2000). “Whenever the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Job descriptions, relied upon by the Employer, are only paper authority and are not given any controlling weight by the Board. *Training School at Vineland*, *supra*; *Audubon Regional Medical Center*, 331 NLRB 374, 421 (2000).

As the Employer asserts the lead operators are supervisors, the Employer has the burden of proving their supervisory status. The Employer provides no evidence the lead operators can hire, fire, reward, promote, suspend, layoff or recall, or effectively recommend such actions. Therefore, this analysis is limited to whether lead operators

can assign, responsibly direct, transfer, discipline, or effectively recommend such actions, or adjust grievances. I find the Employer has not met its burden with respect to these criteria.

**A. Assignment of Work/Scheduling/Transfer**

The lead operator's role in assigning work does not demonstrate supervisory status. With respect to scheduling, lead operators do not schedule employees for particular shifts or to work in particular departments, nor is there any evidence they schedule employees to work on particular reactors or other machines. Lead operators also cannot transfer non-lead operators to a different shift, department, or job classification. Production and shipping schedules prepared by unit employees are used to determine which reactors are available at which times to make a particular product, and which trucks have to be loaded first to meet the shipping schedules. Once the non-lead operators are working on either the blender, the reactor, or loading trucks, they work independently.

Assignment power is supervisory where the purported supervisor exercised independent judgment or discretion in making assignments based on his or her own assessment of an employee. Independent judgment is demonstrated by evidence that an individual has discretion to assign work of different degrees of difficulty or desirability on the basis of his or her own assessment of an employee's ability or attitude. If the assigned tasks are routine and do not require a purported supervisor to differentiate between employee skill levels, the individual making the assignments will be found non-supervisory. See *Patagonia Bakery Co., Inc.*, 339 NLRB No. 74, slip op. at 1, fn. 1, 21 (2003). Similarly, where an individual's assignment power is circumscribed by established company policy or higher authority, the individual has been held to be nonsupervisory. See *Halpak Plastics, Inc.*, 287 NLRB 700, 706 (1987).

The record contains no specific evidence of a lead operator making an assignment based on an assessment of the skills of the non-lead operators. There is also no evidence the non-lead operators' skills differ significantly, or that working with one reactor or blender is any different than working on any other. The record does not reflect that the duties required of the reactor operator, the blender operator, or the truck loading operator change significantly from day to day or even from week to week. The absence of such specific evidence is construed against the Employer. *Michigan Masonic Home*, supra. The assignment of work not based on the level of employee skill but on the need to get the work completed on time is not indicative of the use of independent judgment. *Esco Corp.*, 298 NLRB 837, 839 (1990). Finally, there is no evidence the lead operator can assign tasks that are outside of the Employer's established SOPs for the non-lead job classifications, and thus the assignment power of the lead operators is circumscribed and does not reflect the use of independent judgment. The authority to assign work, alone, without the use of independent judgment, is not indicative of supervisory authority. *McGraw-Hill Broadcasting Co., Inc.*, 329 NLRB 454, 456 (1999).

Lead operators also do not exercise supervisory assignment authority when seeking replacements for absent employees. When seeking replacements, lead operators either follow a call-out list to obtain a replacement, or seek volunteers. There is no evidence lead operators can approve overtime, force an employee to work late, or force an employee to come in, even when short staffed. Calling in employees or randomly selecting volunteers, without the ability to compel an employee to come to work or to compel overtime, does not confer supervisory status on the lead operators. *Beverly Enterprises v. NLRB*, 148 F.3d 1042, 1047 (8th Cir. 1998), enfg. *Beverly Enterprises-Minnesota, Inc.*, 323 NLRB No. 200 (2000); see also *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000). The fact that the authority to call in replacements is

not supervisory is further evidenced by the fact that non-lead operators also have the authority to call in replacements.

### **B. Responsible Direction**

An employee who responsibly directs with independent judgment within the meaning of Section 2(11) of the Act, is one who has: (1) been delegated substantial authority to ensure a work unit achieves management's objectives and is thus "in charge"; (2) is held accountable for the work of employees in the unit; and (3) exercises significant discretion and judgment in directing his or her work unit. While the Employer presented some evidence the lead operators meet the criteria listed in the first factor, the Employer has not met its burden in establishing the lead operators meet the second and third factors of being held accountable and of exercising independent judgment.

With respect to the first factor, lead operators are responsible for ensuring the work on their shift is completed in a timely manner and that the production schedule is met. The lead operators are also to ensure the non-lead operators complete various reports and for ensuring the non-lead operators are following the Employer's housekeeping programs of keeping their work areas clean and free from objects that could cause safety problems. The lead operator also has the authority to shut production down for safety reasons, though the record fails to reflect how frequently this occurs. Non-lead operators, however, also have the authority to shut production down for safety reasons. Lead operators are also the highest ranking officials at the plant on nights and weekends.

Assuming the lead operators are "in charge" under the first factor and direct the work force, they do not do so "responsibly" under the second factor as they are not held accountable for the actions of the non-lead employees. The Board has considered accountability in deciding whether individuals are supervisors. Individuals working in nursing homes, for example, who were not fully accountable for the work of the

employees under them were found not to be supervisors. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). Lead operators are not held accountable for the actions of the non-lead employees on their shifts. They are not held accountable if non-lead operators do not timely and correctly fill out the various required reports, nor are they held accountable for production mistakes made by the non-lead operators. Lead operators are also not evaluated on how well the non-lead operators perform on their respective shifts.

Lead operators also do not responsibly direct the work force solely by virtue of their being the highest ranking individual on nights and weekends. There are no specific instances of lead operators handling emergencies or unusual circumstances on their own on nights and weekends, or being held accountable for the work of the non-lead operators on night and weekends. Unusual problems the lead operators cannot resolve must be reported to management. Merely notifying a supervisor of an emergency or unusual situation, without assuming any other role in deciding how to resolve the situation, is insufficient to confer supervisory status. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995); *Northcrest Nursing Home*, 313 NLRB 491, 498-499 (1993). Further, nothing in the statutory definition of supervisor suggests that service as the highest ranking individual on site alone requires a finding that the individual must be a statutory supervisor. *Training School at Vineland*, *supra*. Thus, the Employer has not met the second factor of showing the lead operators direct the work force “responsibly.”

Not only do lead operators not “responsibly” direct the work of non-lead operators, but also they do not exercise independent judgment, the third factor, in directing the non-lead employees. Being able to direct certain tasks, and even being held accountable for the performance of those tasks, alone, does not establish that the lead operators exercise independent judgment in responsibly directing the work unit.



There is no specific record evidence the lead operators monitor the work of the non-lead operators, or that they point out tasks or job duties that the non-lead operators have not properly performed. Even if they did, the ability to ensure non-lead employees complete their job assignments, reprioritizing work to ensure production schedules are met, and calling attention to particular tasks that have not been performed properly, without the authority to hire, fire, discipline, or otherwise affect the employment status of the employees they direct, does not require the use of independent judgment. *Charles Eneu Johnson & Co.*, 67 NLRB 1234, 1236 (1946); *Rockford Screw Prods., Co.*, 1430, 1432 (1945); see also *Brown & Root, Inc.*, 314 NLRB 19, 22 (1994); *Somerset Welding & Steel, Inc.*, 291 NLRB 913, (1988); *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002).

The record does reflect one instance in which a lead operator, who participated in training a new employee, was asked his opinion on whether the employee was properly trained. The lead operator recommended that further training was needed, but stated other non-lead operators were also asked for their opinions. The employee's probationary period was ultimately extended. The Board has found that evaluations such as the one here, that are made by an experienced employee regarding his evaluations of the progress made by probationary employees based on their superior knowledge, does not establish supervisory status where the evaluations do not, by themselves, affect the wages or job status of the employee being evaluated. *Webco Industries*, 334 NLRB 608, 609-610 (2001). The Employer did not provide the specific details surrounding management's decision regarding whether to extend the employee's probationary status, and has thus failed to demonstrate the decision was based solely on the lead operator's evaluations as a trainer. The record also fails to reflect what, if any, impact the extension of the probationary period had on the employee's employment status. In these circumstances, the lead operator's evaluations do not constitute

effective recommendations concerning the employee's employment status. *Id.* at 610. Finally, the ability to train, alone, is not sufficient to confer supervisory status, and is not supervisory indicia under Section 2(11) of the Act. See *Chrome Deposit Corp.*, 323 NLRB 961, 961-963 (1997).

Lead operators do not use independent judgment in directing the non-lead operators because any tasks they direct the non-lead operators to perform are routine in nature and require little direction. Instruction logs, reactor schedules, and shipping/production schedules are prepared by unit employees, and the non-lead employees are familiar with the tasks they are to perform to meet these schedules and require little if any further instruction for the lead operator. When work needs to be reprioritized to meet a change in the production schedule, the non-lead operators perform the necessary tasks generally without direction by lead operators as they are experienced employees who know what needs to be done to meet production demands. Directing non-lead operators to perform tasks that are routine and familiar does not require the use of independent judgment. *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001); *Evangeline of Natchitoches, Inc.*, 323 NLRB 223, 223-224 (1997). To the extent the lead operators are asked for their assistance and advice by less experienced employees, such instruction and assistance based on seniority or experience does not establish supervisory status. See *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997).

The record also reflects the Employer has established policies which delineate what tasks can be performed by the non-lead operators, including detailed job descriptions or SOPs, and the record fails to reflect that lead operators can deviate from established protocols or standard operating procedures in directing non-lead operators to perform certain tasks. Thus, the lead operators' role in directing employees is limited and circumscribed by detailed SOPs issued by the Employer and lacks the degree of

independent judgment required to establish supervisory authority. *Dynamic Science, Inc.*, 34 NLRB 391 (2001). In addition, lead operators do not approve overtime, vacation, sick leave, or other time off, nor do lead operators schedule employees for particular shifts or machines. There is no evidence lead operators can require non-lead operators to work late or come in to work, even when short-staffed.

While the job descriptions indicate lead operators provide direction to the non-lead operators, there is no specific record evidence the lead operators actually do so using independent judgment. The mere inference of independent judgment without specific support in the record is not sufficient to prove supervisory status. *Sears Roebuck & Co.*, supra. Accordingly, I have concluded that any judgment used by the lead operators to assign work and direct non-lead operators to perform discrete tasks is sufficiently curtailed by the Employer's established policies and procedures, and the tasks are of such a routine nature, that the degree of judgment used to direct such tasks falls short of the independent judgment required for supervisory status. *NLRB v. Kentucky River Community Care*, 532 NLRB 706 (2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

### **C. Discipline**

Lead operators do not have the authority to discipline non-lead employees, nor do they have the authority to effectively recommend such actions. The authority to effectively recommend means that the recommended corrective action is taken without any independent investigation by a higher authority, not that the recommendation was eventually followed. *Children's Farm Home*, 324 NLRB 61 (1997). Here, the record fails to establish that any recommendations made by lead operators on disciplinary actions are accepted without any independent investigation or review into the incident by higher management. In the single example of a lead operator recommending the termination of an employee, a higher management official conducted an independent investigation.

In addition, while lead operators can advise management that non-lead operators have failed to perform a specific task, there is no evidence they have actually reported such failures to management or that any employees have been disciplined as a result of such reports. Further, even if a lead operator did report such an incident to higher management, the record reflects that higher management would conduct their own investigation into the incident before making the ultimate decision on whether to issue discipline. Where an admitted supervisor conducts an independent investigation and determines what, if any, disciplinary action will be given, the lead operator's role in advising the supervisor of the conduct is merely a reportorial function that does not confer supervisory status on the lead operators. *Passavant Health Center*, 284 NLRB 887, 891 (1987).

#### **D. Adjusting Grievances**

Lead operators do not have the authority to adjust grievances. The job description for lead operators states they can resolve minor conflicts, but unresolved conflicts must be brought to the attention of higher management. The limited ability to resolve minor complaints, such as disagreements between employees, however, does not rise to the level of the adjustment of grievances sufficient to make lead operators statutory supervisors. *Greenhorne & O'Mara*, 326 NLRB 524, 527 (1998); *St. Francis Medical Center - West*, 323 NLRB 1046, 1047-1048 (1998). Further, the Employer presented no specific instances of lead operators directing resolutions to any particular grievances. Absent specific evidence in support of the lead operator's authority to use independent judgment in adjusting grievances, I cannot conclude lead operators possess the authority to adjust grievances. *Sears, Roebuck & Co*, supra.

#### **E. Conclusions**

Lead operators do not assign, responsibly direct, transfer, or discipline employees, or effectively recommend such actions, or adjust grievances, with the

requisite degree of independent judgment. Therefore, I find the Employer has not met its burden of proof to demonstrate the lead operators are statutory supervisors. Accordingly, the lead operators in the Polyester, Emulsion, and Urotuf departments are appropriately included in the unit.

#### **F. Scheduler/Lead Operator in Urotuf**

The Employer contends the lead operator in Urotuf, who also performs unit work as a scheduler for that department, is a dual function employee who should be excluded from the unit because of his time spent performing supervisory work as a lead operator. As I have concluded the lead operators are not supervisors and should be included in the unit, the scheduler/lead operator in Urotuf is not a dual function employee. Accordingly, I shall include the scheduler/lead operator in the unit found appropriate here.

### **IV. STATUS OF OTHER DISPUTED CLASSIFICATIONS**

In addition to the status of the lead operators, the parties dispute the status of the interim Polyester production manager, the environmental engineer, the Polyester chemist, and the contract coordinator. I have concluded the interim production manager is not a supervisor and does not regularly substitute for a supervisor and is eligible to vote. I have also concluded the record evidence is insufficient to make a determination on the unit placement of the environmental engineer, Polyester chemist, and the contract coordinator, and I shall allow them to vote subject to the Board's challenged ballot procedure.

#### **A. Interim Production Manager - Polyester**

The scheduler in the Polyester department is currently acting as the interim production manager in the production manager's absence due to illness. The interim production manager, Ted Binzen, is expected to be absent approximately 6 months, and

by the time of the hearing, he had already been absent 4 of these 6 months. The interim production manager continues to perform his duties as scheduler while acting as the interim production manager. While the parties stipulated the regular production manager is a supervisor under Section 2(11) of the Act, the Petitioner has failed to meet its burden of proving the interim production manager possesses supervisory authority. The interim production manager remains hourly paid as the other unit employees and has not received an increase in his wages while acting as interim production manager. While the plant manager testified the interim production manager exercises supervisory authority, the record fails to reflect any specific evidence the interim production manager exercises supervisory authority. One lead operator testified the interim production manager gave him a performance evaluation. The record fails, however, to reflect any details regarding this evaluation. The record does not indicate whether the evaluation constituted effective recommendation for promotion, wage increase, or discipline, or that this evaluation carried any recommendation for specific personnel actions. The authority to simply evaluate employees, without more, is insufficient to confer supervisory status. *Passavant Health Center*, 284 NLRB 887, 891 (1987). Further, there is no evidence as to what weight, if any, was given to any input by the interim production manager into the evaluation.

The environmental health and safety manager also testified he had heard the interim production manager had disciplined an employee, but he had not seen any documentation of such disciplinary action. The record fails to reflect any evidence the interim production manager did in fact issue discipline to an employee, or that he did so using independent judgment. Such conclusionary evidence, without specific evidence of independent judgment, is inconclusive to establish supervisory authority. *Sears, Roebuck & Co.*, *supra*. The record fails to reflect that the interim production manager possesses any other supervisory indicia under Section 2(11) of the Act. I, therefore,

conclude the Petitioner has not met its burden, as the party asserting supervisory status, of establishing the interim production manager is a supervisor under Section 2(11) of the Act.

Even assuming the interim production manager does possess supervisory authority, the appropriate test for determining the supervisory status of an employee who substitutes for supervisors is whether the part-time or interim supervisor spends a regular and substantial portion of their working time performing supervisor tasks. *Aladdin Hotel*, 270 NLRB 838, 840 (1984). I conclude the individual acting as interim production manager has been substituting for a substantial period of time because he has been serving in this position for 4 months. However, his substitution has not been “regular” because it was necessitated by an unusual occurrence, the illness of the production manager, and not likely to reoccur. The production manager is expected to return to work in approximately 2 months, at which time the interim production manager will return to his unit position. In these circumstances, the interim production manager does not substitute for a supervisor on a regular and substantial basis so as to warrant excluding him from the unit, even where he may still be acting as the interim production manager on the date of the election. *Gaines Electric Co., Inc.*, 309 NLRB 1077, 1078, fn. 3 (1992); *Thermoid Co.*, 123 NLRB 57, 58-59 (1959). Accordingly, I shall include the interim production manager in the unit found appropriate here.

#### **B. Environmental Engineer**

The Petitioner contends the environmental engineer who works in the Waste Water Treatment department should be excluded as a professional and as a supervisor. The environmental engineer did not testify, nor did any employees who work directly with her. The environmental engineer has a degree in environmental sciences. Her responsibilities include ensuring compliance with the Environmental Protection Agency (EPA) regulations, though the record fails to reflect the exact nature of her duties in this

regard, and running tests apparently similar to tests run by the waste water operator to determine whether the treatment plant is operating properly. If the treatment plant is not operating properly, the environmental engineer will "troubleshoot" to determine what needs to be done to correct any deficiency. The record does not reflect the type of tests run by the environmental engineer, how she "troubleshoots", how she determines whether the treatment plant is operating properly, and how she corrects deficiencies.

With respect to the environmental engineer's status as a supervisor, the Petitioner relies primarily on the testimony of the environmental health and safety manager that the environmental engineer "directs" the work force on what needs to be done to comply with EPA regulations. The environmental health and safety manager also testified, however, that the environmental engineer directed what *changes* were necessary to conform to the EPA, but did *not* direct the workforce in accomplishing these changes. This testimony, however, is conclusionary and the record fails to reflect any specific examples of the environmental engineer directing the work force using independent judgment.

The environmental engineer does discuss with the operators any questions they have on filling out the BMP (Best Management Practice) forms used to indicate environmental problems such as chemical spills, though the record fails to reflect she exercises any supervisory authority in doing so. She is also "responsible" for the environment of the entire plant and reports on the plant's status with respect to compliance with the EPA regulations. Again, the record fails to reflect specific examples of the environmental engineer performing any of these duties using independent judgment. These mere inferences, which lack detailed, specific evidence of the use of independent judgment, are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, supra. I find the Petitioner has not met its burden of establishing the supervisory status of the environmental engineer and I shall not exclude her on this basis. I have



also concluded the record evidence is insufficient to determine the exact nature of the environmental engineer's duties and responsibilities, and whether those duties are carried out using the type of discretion and judgment that would qualify her as a professional. The record also fails to reflect the difference between the duties of the environmental engineer and the environmental health and safety specialist whose duties have been described as "similar" and whom the parties have stipulated should be included in the unit. I am unable, therefore, to determine from the record evidence whether the environmental engineer is a professional employee under Section 2(12) of the Act. Accordingly, I shall permit the environmental engineer to vote subject to the Board's challenged ballot procedure.

### **C. Polyester Chemist**

The Employer recently hired a chemist in the Polyester department. The chemist did not testify, nor did any employees who work directly with her. The chemist has been working in the plant for approximately 3 weeks, and while the record reflects what the Employer "intends" her duties to be, there is very little record evidence indicating what her actual duties and responsibilities are. The Employer does not have a job description for this classification. The record does reflect the chemist is salaried and currently works in the main office building, though the Employer anticipates she will eventually be working in a laboratory that is currently under construction. The chemist has a Master's degree in chemical engineering. She is responsible for running samples of the product and for checking and revising the product formula to ensure and optimize the quality of the product. She also responds to customer complaints involving the quality of the product. The chemist is expected to train the quality control laboratory technicians who are unit employees, but she has not yet done so. The record fails to reflect how the chemist checks the samples, or how the chemist checks and revises the formula to ensure quality. Thus, the record fails to reflect whether the chemist exercises the

discretion and judgment necessary to qualify for professional status under Section 2(12) of the Act. The record also fails to reflect how the duties of the chemist in the Polyester department differ from those of the chemist in Emulsion whom the parties have stipulated should be included in the unit. I am, therefore, unable to determine the unit placement of the chemist in the Polyester department. Accordingly, I shall permit the chemist in the Polyester department to vote subject to the Board's challenged ballot procedure.

#### **D. Contract Coordinator**

The individual in the position of contract coordinator has held this position for approximately 3 to 4 years. Prior to taking this position, the contract coordinator was a lead operator in the Maintenance department which the parties have stipulated is a supervisory position. The contract coordinator "coordinates" maintenance repairs that need to be performed by outside contractors. If the Maintenance department cannot repair the machinery and an outside contractor must be used, the contract coordinator obtains bids from various contractors, ensures the bids cover the scope of the repairs, and then submits the bids to the maintenance supervisor. Once a contractor has been hired, the contract coordinator determines when the outside contractor can perform the necessary repairs without disrupting the production. The record does not reflect the exact nature of the contract coordinator's duties with respect to coordinating outside repair work with production. The contract coordinator also "coordinates" work permits for the outside contractors, though the record also does not reflect the exact nature of these duties.

The contract coordinator is an hourly employee though he works different hours than other unit employees and works in an office in the maintenance area. The record does not clearly reflect whether the contract coordinator reports to the maintenance manager or to another member of management. With respect to the issue of the nature

and frequency of the contact between the contract coordinator and unit employees, the record evidence is very minimal. The contract coordinator "occasionally" assists the electricians, who are unit employees, with troubleshooting. The contract coordinator is also on the "on-call" list for responding to maintenance calls as are the electricians, though the record does not reflect how frequently the contract coordinator is called out or what contact he has with unit employees when he is called out. One lead operator testified he had observed the contract coordinator in the plant on several occasions, but did not have direct contact with the contract coordinator himself and did not know the nature of the work being performed by the contract coordinator when he was in the plant. Another non-lead operator who testified he has also been performing the duties of a "project coordinator" for approximately 4 months, stated he had frequent contact with the contract coordinator while functioning in his role as "project coordinator." The record does not define the duties of the project coordinator, nor does the record distinguish between the duties of the project coordinator being performed by a unit employee and the contract coordinator whom the Employer would exclude. Because the record fails to reflect the frequency and the exact nature of the contact between the contract coordinator and the unit employees, and the difference between the duties of the project coordinator and the contract coordinator, I am unable to determine the unit placement of the contract coordinator. Accordingly, I shall permit the contract coordinator to vote pursuant to the Board's challenged ballot procedure.

## **V. CONCLUSIONS AND FINDINGS**

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>1</sup>

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees including lead operators, warehouse employees, spotters, boiler house employees, polyester lab employees, emulsion lab employees, and waste water treatment employees employed by the Employer at its Morris, Illinois facility,<sup>2</sup> EXCLUDING office clerical and professional employees, guards, and supervisors<sup>3</sup> as defined in the Act.

---

<sup>1</sup> The parties stipulated that the Employer, a Delaware corporation, is engaged in the manufacture of chemicals at its Morris, Illinois facility. During the past 12 months, which period is representative of the Employer's operations, the Employer sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Illinois. The parties further stipulated the Employer is engaged in commerce within the meaning of the Act.

<sup>2</sup> The parties stipulated the individuals in the following classifications should be included in the unit as they share a sufficient community of interest with the petitioned-for unit: the interim scheduler in Polyester, the Emulsion scheduler, shipping coordinator, EHS specialist, and the Emulsion chemist. Because the record evidence is inconclusive as to the status of the environmental engineer, the Polyester chemist, and the contract coordinator, the individuals in these classifications may vote subject to the Board's challenged ballot procedure.

<sup>3</sup> The parties stipulated the following individuals are supervisors under Section 2(11) of the Act and should be excluded from the unit because they possess the authority to hire, fire, discipline, assign, and/or direct employees: the lead operator in maintenance, the plant manager, composites (polyester) production manager, coatings production manager, materials manager, environmental health and safety manager, composites (polyester) technical manager, controller, and maintenance/utilities/engineering manager. Accordingly, in agreement with the parties, I find these individuals are supervisors within the meaning of Section 2(11) of the Act, and I shall exclude them from the unit found appropriate here.

For the reasons stated above, I conclude the interim production manager in the Polyester department is not a supervisor and does not regularly substitute for a supervisor and I shall include him in the unit found appropriate here.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Chemical Workers Union Council of the United Food and Commercial Workers Union. The date, time, and place of the election will be specified in the notice of election that the Board's Subregional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in Subregion 33, Hamilton Square, 3000 Hamilton Boulevard, Suite 300, Peoria, Illinois, 61620, on or before **September 7, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (309) 671-7095 or by electronic mail at Subregion 33@nlrb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact Subregion 33.

## **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to

potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. (EDT) on **September 14, 2004**. This request may not be filed by facsimile.

Dated: August 31, 2004  
at: St. Louis, Missouri

/s/ [Ralph R. Tremain]

---

Ralph R. Tremain, Regional Director  
National Labor Relations Board, Region 14